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FILED

September 19, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPT. OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF LICENSE OF
IRVIN M. GERSON, M.D.
TO PRACTICE MEDICINE *AND* SURGERY
IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION
FINAL ORDER

This matter ~~was~~ presented to the State Board of Medical Examiners by the Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General, by ~~way~~ of Administrative Complaint **filed** July 2, 2003. The twelve-Count Complaint **alleged** that respondent **had** directed persons, unauthorized by licensure, to select and administer ~~various~~ forms of the listed unsupervised electrodiagnostic testing, including electroencephalograms (EEGs), “brain mapping” or quantitative or digital electroencephalograms (DEEGs), somatosensory evoked potentials (SEPs), dermatomal evoked potentials (DSEPs), visual evoked potentials (VEPs), electrocardiograms (EKGs), nerve conduction velocities (NCVs) and brainstem evoked auditory potentials (variously known as AEP or BAEP or BAER) on patients in the absence of professionally **appropriate** clinical examination establishing that ~~any of~~ such tests would be medically indicated. The Complaint also alleged test interpretation, including misinterpretation, by **unlicensed** persons, ~~as well as~~ billing improprieties. The Complaint further alleged the

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performance of services of alleged itinerant technicians administering a variety of electrodiagnostic studies at the offices of numerous referring practitioners in New Jersey. Said conduct continued over a period of at least 1996-2000. The conduct, as more fully set forth in the Complaint, **was** alleged to constitute violations of N.J.S.A.45:1-21(b), (c), (d), (e) and (h), N.J.S.A.45:9-16 (currently recodified as N.J.S.A. 45:1-21(n)) and violations of rules N.J.A.C. 13:35-2.5 (later recodified and amended as -2.6), N.J.A.C. 13:35-6.5 and N.J.A.C. 13:35-6.16.

Respondent Irvin M. Gerson, M.D., who holds license number MA21526, is presently 85 years old and has been engaged in the private practice of neurology since 1967, with primary offices in Philadelphia, Pennsylvania. He is represented by Nicholas C. Harbist, Esq. of Blank Rome LLP.

Dr. Gerson, having considered the allegations of the Complaint **and** the supporting information, and having had the opportunity to consult with his attorney, **has** waived his opportunity to file an Answer to the Complaint followed by plenary hearing before the Board or the Office of Administrative Law. In the interests of amicable settlement of the matter, respondent asserts that he neither admits nor denies any of the allegations of the Complaint. Dr. Gerson represents that, **because** of his age and health. **and** because he ceased the practice of medicine in New Jersey since late 2001, he elects to permanently retire from the practice of medicine and surgery in the State of New Jersey and will not seek to return to the practice in the future, and to make certain financial payments **as** set forth below.

The Board has considered the assertions offered by respondent during the course of the pre-Complaint investigation and thereafter, in partial explanation for the alleged unlawful conduct **as** set forth in the Complaint, and has considered the above representations and others submitted to the Board on behalf of respondent in mitigation of available remedies. This Board's

action is based solely on the conduct alleged in the Complaint regarding performance of the listed testing of patients in **New Jersey**, **and** does not address respondent's practice of medicine in **any** other jurisdiction.

For sufficient cause shown, and contingent upon respondent's compliance with all of the conditions set forth below,

IT **IS**, ON THIS 19th DAY OF September, 2003

ORDERED:

1. The decision of respondent Irvin M. Gerson, M.D. to permanently retire from the practice of medicine and surgery in the State of New Jersey, and not otherwise conduct the practice of medicine **is** hereby accepted, effective immediately. Because respondent elects to retire from the practice of medicine in New Jersey, he will assure delivery of his license **and** biennial registration to the State Board of Medical Examiners within ten (10) **days** of the entry of this Order, along with all CDS and **DEA** registrations applicable to New Jersey, and not seek reinstatement thereof.

2. Respondent shall assure **orderly** transfer of New Jersey patients and availability to them of their patient records, pursuant to the requirements of N.J.A.C. 13:35-6.5(h). He shall assure that all New Jersey office letterhead and all prescription **pads** listing Respondent's name and referencing **any** New Jersey location are destroyed. He shall make safe and appropriate disposition of any medications and any medical equipment maintained in this State. He shall issue no prescriptions or engage in **any** consultations for New Jersey **patients at** any location, whether in or out of State.

3. With regard to **any** form or component of professional practice or services for New Jersey patients alleged by respondent to have been performed by him or by or on behalf of

any of his practice entities or performed at any location in New Jersey, for which he **had** not yet billed or for which he had not received payment as of this date, he shall forego any attempt to bill or to collect for such alleged services and shall withdraw all claims for payment for such alleged services.

4. Respondent shall assure that no corporate entities in which he holds any financial or equitable interest, including “University Services, P.C.,” shall accept a referral for, or undertake performance or interpretation of testing described above to be performed at any location within New Jersey or on **any** New Jersey patient. He **shall** neither request nor **accept**, in his own name or that of **any** corporate entity, any payment of **any** sort in connection with such health care **services** as described in the Complaint to **New** Jersey patients or practitioners. To the extent that “University Services, P.C.,” in which Respondent is a **part** shareholder, conducts lawful activities in this State not involving the testing described above, **and** not listing Respondent as a provider or on its letterhead, its lawful activities in this State shall not be precluded by this **paragraph** or by **paragraph 3** of the Disciplinary Directives.¹

5. Respondent has expressly agreed to abide by the Disciplinary Directives subparagraphs 1 through **4**, except as otherwise set forth herein.

6. Respondent shall reimburse, within ten (10) days of the entry of this Order, the third **party** payors of the twelve patients’ referenced in the Complaint, as listed on Attachment A to this Order. Dr. Gerson shall deliver to the Board office separate certified check(s) or money order(s) payable to each pertinent carrier for a named insured. The Board office will record the payments and transmit the checks to the carriers.

¹ Paragraph 3 of the Disciplinary Directives is modified to the extent set forth in this **paragraph**.

² Patient names are **redacted** to protect confidentiality. Full identities have been disclosed to Dr. Gerson, and the pertinent **payor** shall be notified of **the** entry of the Order.

7. Respondent is assessed investigative costs of \$16,961.00, attorney fees of \$17,100.00, and an aggregate civil penalty of \$60,000.00 for the offenses set forth in Counts 1 through 12, totaling \$94,061.00, \$34,061.00 to be paid within 10 days of the entry of this Order. at the Board office at P.O. Box 183, Trenton, NJ 08625-0183, and the remaining \$60,000 in civil penalty shall be paid in semi-annual payments of \$10,000 over a three-year period from the date of the entry of this Order. Payments shall be made by certified check or money order payable to the State of New Jersey. Failure to so pay the assessments set forth in paragraphs 6 and 7 within ten (10) days of the entry of the Order shall result in the filing of a Certificate of Debt pursuant to N.J.S.A. 45:1-24, which shall be binding upon respondent and his heirs and assigns. Interest shall accrue in accordance with Rule of Court 4:42-11.

8. This Order is intended to resolve all administrative and license issues arising with respondent, which were specifically alleged as violations by the Attorney General in the Administrative Complaint with regard to Dr. Gerson's responsibility to the New Jersey State Board of Medical Examiners. The entry of this Order shall not limit the authority of the Attorney General or of any other person or agency, to initiate any other action permitted by law, whether administrative, civil or criminal, in any court of competent jurisdiction or other forum.

THIS ORDER IS EFFECTIVE UPON FILING.

I have read the within Order and understand its terms. I consent to the filing of the Order by the Board of Medical Examiners

Irvin M. Gerson M.D.
Irvin M. Gerson, M.D.

STATE BOARD OF MEDICAL EXAMINERS

By:

David M. Wallace
David M. Wallace
President

Witness:

By:

Nicholas C. Harbist, Esq.
Nicholas C. Harbist, Esq.
Counsel to Dr. Gerson